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CRL.O.P.No.22817 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.O.P.No.22817 of 2019

and

Crl.MP.No.12219 of 2019

1.Devaki
2.D.Kumutha
3.B.Kamala
4.C.Kasthuri
5.K.Revathi

..

Petitioners/Accused 1to 5

Versus

1.The State rep by
the Inspector of Police,
Pallikaranai Police Station,
Chennai.

...

1st Respondent

2.Jayanthi Ravi

...

2nd Respondent/complainant
/Defacto complainant.

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records of FIR in Crime No.1561/2019 dated 14.12.2018 for the alleged offence u/s.465 IPC pending on the file of the 1st respondent and quash the same.

For Petitioners	:	Mr.S.N.Subramani
For Respondent-1	:	Mr.A.Gopinath Government Advocate



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For Respondent-2 : McGAN law firm

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ORDER

This Criminal original petition has been filed to quash the FIR in Crime No.1561/2019 dated 14.12.2018 for the alleged offence u/s.465 IPC pending on the 1st respondent police.

2. The petitioner is arrayed as an accused 1 to 5.

3. The case of the prosecution is that the *defacto* complainant had purchased a property in plot No.317 in survey Number 45/11 comprised in patta No.81299 measuring an extent of 4800 sq.ft in her capacity as power agent of her son Ravi on 06.02.2015 from one Ravi Arumuga Muthaiya. From the date of purchase, she is in possession and enjoyment of the same. When the second respondent started to make arrangements to build a building in the said site, some three persons who are arrayed as accused 1 to 5 had given a complaint to police. When the police enquired the petitioners 1 to 5 produced their respective sale deeds; but the original owner Gopinath had already sold the property to one Muthaiya Gandhinathan on 26.04.1966. The said Muthaiya Gandhinathan had executed a power of attorney in favour of one Valliammai. The said Valliammai as power agent had sold the property in favour of one Ravi Arumugavelan in the year 2000 and thereafter, the Ravi



Arumugavelan had executed the power deed in favour of one V.Karnan in the year 2013. The power document executed in favour of V.Karnan was cancelled on 05.02.2015 and thereafter, the said Ravi Arumugavelan had executed the sale deed in favour of the defacto complainant. The accused 1 to 5 have created documents as though they had purchased the property from the original owner Gopinath and threatened the original owner who is the second respondent herein with an intention to grab the impugned property. On the above said allegation a case has been registered in Crime No.1561/2018 for the offence under Section 465 IPC.

4.The learned counsel for the petitioners submitted that the petitioners have also purchased their respective property from the original owner Gopinath in the year 1990 and they have not forged any document and hence the offence under Section 465 IPC will not be made out against them; since the dispute is in respect of the house sites between the two parties, the matter is civil in nature; the petitioners have also filed a suit in OS.No.940/2015 on the file of the learned Additional District Munsif, Allandur, against the defacto complainant and her son and obtained an order of injunction.

5.The learned Government Advocate appearing for the first respondent



police submitted that the original owner Gopinath had already sold his property in favour of one Valliammai; in that case, he has got no right to sell the property once again to the petitioners 1 to 5; only if the investigation is allowed to go, the real facts about the dealings would come to light; even though the matter appears to be civil in nature if the parties have acted with a criminal intention and created documents between themselves it will not absolve the criminal liability.

6.Heard the submissions made by the learned counsel on either side and perused the materials available on record.

7.On perusal of the records it is seen that the defacto complainant claims her right in respect of the house site in survey No.45/11. The petitioners 1 to 5 have purchased the properties in respect of Survey No.45/3A. The plot number, survey number and the patta number from the patta number of the properties in the name of the second respondent and the petitioners substantially differ. Even the suit filed by the petitioners 1 to 5 does not have relevance to the property situated in Survey No.45/11 for plot No.317 and patta No.81299.



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8. But the core contention of the learned Government Advocate for the respondent is that the original owner Gopinath have sold the property in the year 1966; hence he could not have sold the property once again in favour of the petitioners herein. In that case, either the Gopinath who had executed the sale deed in favour of the petitioners should be a vexatious person or the property sold by the petitioners does not relate to the property purchased by the second respondent's son on 06.02.2015. Before registering the first information report, had the first respondent clarified the boundaries of properties claimed by the defacto complainant and the petitioners 1 to 5, it would have come to light whether the claim made by the petitioners 1 to 5 is a false claim or a different claim. If such facts are found that the case could have been closed as civil in nature.

9. Now from the material available on record, it cannot be known whether the sale deeds executed in the year 1990 in favour of the petitioners have got any criminal intention or not. However the Court cannot lose sight of the fact that no criminal colour can be given for civil disputes between the parties. Hence, I feel it is appropriate to direct the first respondent police to make a thorough enquiry as to the nature of the dispute and to find out



whether any vexatious person had played the role of the original owner of Gopinath and created the sale deeds in favour of the petitioners 1 to 5 before filing the charge sheet.

10. If the investigation reveals that the claim made by the petitioners 1 to 5 and the defacto complainant are two different properties and the two different properties are bounded by distinct boundaries, there is no need to file the charge sheet. Since the matter is at the threshold stage without material details, the Court cannot decide about the intention or the real facts behind the respective claims and the dispute made by the parties.

With the above observation, this Criminal original Petition is **disposed** of. The first respondent police is directed to complete the investigation within a period of two months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

15.12.2022

Index: Yes/No
jrs



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To:

- 1.The Inspector of Police,
Pallikaranai Police Station,
Chennai.
- 2.The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J.,

jrs

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